

V. SWBT DISCRIMINATES AGAINST CLECs ENTERING THE MARKET THROUGH THE UNE PLATFORM.

55. During a workshop before the Texas TPUC on May 15, 2000, SWBT stated that it will not provide the UNE platform to CLECs seeking to provide service in SWBT's Richardson, Texas, central office, from which SWBT provides "fiber-to-the curb" service to more than 30,000 retail customers. Although the full dimensions of SWBT's policy are not yet known, its refusal to process UNE-P orders in Richardson is clearly discriminatory.

56. "Fiber-to-the-curb" service involves the use of fiber optic loop feeder very close to the premises of the end user. This will shorten the lengths of the copper loop plant that services customers' homes, thereby increasing the total number of customers who will be able to obtain xDSL and other broadband services and the value and bandwidth of the services they provide. In this sense, fiber-to-the-curb goes beyond SWBT's Project Pronto, which would extend the fiber optic loop feeder only to remote terminals typically located within 5,000 feet of customers' homes.³⁹

57. SWBT has stated that it deployed fiber-to-the-curb in Richardson in 1994, when it replaced the existing copper plant. Currently, SWBT serves 30,000 retail customers out of the Richardson central office through that technology. In addition, SWBT has announced plans to serve an additional 10,000 retail lines in Richardson through fiber-to-the-curb by the end of 2000.

³⁹ See Supplemental Declaration of C. Michael Pfau and Julie S. Chambers ("Pfau/Chambers Supp. Decl."), ¶ 62.

58. AT&T has sought to provide local exchange service in Richardson through the UNE platform. Some UNE-P orders submitted by AT&T were not rejected and, in fact, were provisioned by SWBT. Nonetheless, barriers to entry in Richardson became apparent. As AT&T described in its supplemental submission last month, AT&T recently learned that although Richardson customers may obtain ADSL service from SWBT, CLECs using the Verigate interface receive a “red” indicator when they use that interface to determine whether they may obtain xDSL-capable loops to provide advanced services to the same customers. The “red” indicator means that CLECs may not provide xDSL service over the loops available from SWBT. Pfau/Chambers Supp. Decl., ¶ 62 n.60.

59. At the May 15 DSL workshop before the TPUC, SWBT added an additional restriction. SWBT expressly stated that CLECs may provide service in Richardson through the fiber-to-the-curb technology *only* if they do so through resale. In response to CLECs’ questions, SWBT stated that *any* UNE-P order would be rejected: “[I]t’s only available as a resell product in Richardson because of the fact that we cannot rebundle those elements. They’re fully integrated. They can’t be broken up.”⁴⁰

60. As the above-quoted statement suggests, SWBT attempted to justify its rejection of UNE-P orders in Richardson on the ground that the loop is fully integrated “with

⁴⁰ See Transcript of Workshop in TPUC Project Nos. 20400 and 22164, dated May 15, 2000, at 156 (statement of Carol Chapman, Southwestern Bell) (attached hereto as Attachment 9). See also *id.* (“[M]y understanding is that we have [only] resell in Richardson”) (statement of Dave Borders, Southwestern Bell).

both the switch and the ATM.”⁴¹ SWBT’s explanation is nonsense. When a CLEC seeks to offer local exchange service through UNE-P, it requests access to elements that are already combined – and does not want them “broken up.” Moreover, SWBT cannot claim that it is technically infeasible for CLECs to provide voice service through the UNE platform using fiber-in-the-curb architecture, since AT&T previously – and successfully – submitted UNE-P orders for Richardson customers.

61. SWBT’s rejection of UNE-P orders in Richardson goes beyond its previously-stated refusal to foreclose access to the Project Pronto architecture to CLECs who seek to provide integrated voice *and* xDSL services over a single loop. Under SWBT’s policy, *no* CLEC could provide service through the UNE platform in Richardson, even when it was providing voice service alone.

62. The exact dimensions of SWBT’s new policy are unclear at this time, given its recent announcement. For example, it is unclear whether SWBT will apply this policy to any jurisdiction where it has installed, or will in the future install, fiber-to-the-curb architecture. Regardless of the precise scope of its policy, however, it is clearly discriminatory for SWBT to allow resellers, but not CLECs providing service through the UNE platform, to use the fiber-to-the-curb architecture in Richardson. SWBT has not provided, and cannot provide, any basis for such disparate treatment, which constitutes yet another barrier to effective competition in the Texas local exchange market.

⁴¹ *Id.*; *see also id.* at 157-58 (“That’s our position, and also in – that this – that the configuration is fully integrated into the switch. I don’t think there is a breaking point where . . . you could break it up”) (statement of Dave Borders, Southwestern Bell).

VI. SWBT's OSS STILL HAVE NOT BEEN SHOWN TO BE OPERATIONALLY READY.

63. Notwithstanding the TPUC's conclusion that SWBT has met its OSS obligations (TPUC Eval. at 5, 10), actual commercial usage data continue to provide no support for SWBT's claims that its OSS are operationally ready. Furthermore, the comments filed in this proceeding call into further doubt SWBT's claim that its OSS have sufficient capacity to handle CLEC demand.

A. Commercial Usage Data Continue To Show That SWBT's OSS Are Not Operationally Ready.

64. SWBT's performance data for March, and AT&T's recent commercial experience in providing service to customers using the UNE platform, show that SWBT's OSS are still not operationally ready to provide nondiscriminatory access. In addition to the increasing rejection rates and delays in the return of mechanized rejection notices as order volumes increased, SWBT continued to show deficient performance in March in the key area of provisioning accuracy, while its performance decreased in the key area of wholesale billing timeliness. Moreover, SWBT rendered unstable, inadequate, and erroneous performance in notifying AT&T of migrations of AT&T customers to other local exchange carriers.

65. **Provisioning Accuracy.** SWBT continued to render poor performance in March in Mechanized Provisioning Accuracy (PM 12), which compares the features ordered on a mechanized order with those that are actually provided on the switch. *See Chambers/DeYoung Supp. Decl.*, ¶ 128. SWBT's overall rate of provisioning accuracy for all CLEC orders was 90.9 percent in March, as compared with the February rate of 90.8 percent. These rates remain far below the January rate of 97.1 percent, and other provisioning accuracy rates reported by SWBT

for months prior to February. By contrast, SWBT's provisioning accuracy rate for its own retail orders in March was 94.7 percent.

66. For AT&T's UNE-P orders, the mechanized provisioning accuracy rate was 89.3 percent in March. Although this rate represented a modest increase over the February rate of 85.6 percent, it still is below the January rate of 97.2 percent, and well below parity..

67. Thus, for both CLEC orders generally and for AT&T's UNE-P orders, SWBT still fails to provide CLEC customers with the features that they ordered approximately 10 percent of the time. As we stated in our previous declaration, SWBT cannot reasonably be said to be operationally ready when it commits errors at this level, especially when SWBT commits such errors on only 5 percent of its own retail orders. Chambers/DeYoung Supp. Decl., ¶ 130. The high rate of provisioning errors on CLEC orders puts CLECs at a competitive disadvantage, since CLECs (unlike SWBT) currently have no means of determining whether the order has been provisioned as ordered, and customers will blame provisioning errors on the CLEC.⁴²

68. Remarkably, SWBT has proposed in TPUC proceedings that mechanized provisioning accuracy be *eliminated* as a performance measurement, on the grounds that (1) this measurement does not capture all provisioning errors (such as all switch programming errors that impact routing of calls); and (2) SWBT does not know how to measure the full range of possible

⁴² As a representative from Consumers Union testified before the Texas legislature earlier this month, due to periodic "horror stories" concerning problems that CLEC customers are experiencing in installation and billing (including errors and outages), "[t]he message that a lot of folks are getting is, it's better to stay where we are – where I am because I know my phone works." Transcript of Proceedings before the Committee on State Affairs of the Texas House of Representatives, May 10, 2000, at 34-35 (statement of Janee Breisemeister, Consumers Union).

provisioning errors that it commits. SWBT also has asserted that provisioning accuracy errors would be included within the data reported under PM 35, the percentage of trouble tickets submitted within 10 calendar days of installation.⁴³

69. SWBT's reasoning is illogical. The failure of the mechanized provisioning accuracy performance measurement to capture all of SWBT's provisioning errors cannot justify the total elimination of the metric; it simply shows that the metric understates the extent of provisioning errors. Furthermore, the percentage of trouble reports submitted within 10 days of installation would not be a reliable measurement of SWBT's actual rate of provisioning accuracy, because a provisioning error will not necessarily result in the submission of a trouble report during that time frame – if any trouble report is filed at all. For example, some types of provisioning errors (such as errors in customized routing) will not, in all likelihood, be noticed by the customer, but are of serious concerns to a CLEC who has made substantial investment in its network capability. Other types of errors, such as the failure to install automatic call return, may not be noticed by the customer until more than 10 days after installation. And, in some

⁴³ Attachment 10 hereto contains the portions of SWBT's May 10, 2000 proposed red-lining of the Texas Performance Measurement that would eliminate mechanized provisioning accuracy (PM 12) and modify percentage of trouble reports within 10 days of installation (PM 35). SBC's proposed modifications to PM 35 are essentially clarifications that expressly provide that this performance measurement applies to POTS and UNE-P service. SWBT maintains that PM 35 captures all provisioning errors because any such errors would be detected by the customer within 10 days after completion of the order and would result in a trouble report.

situations, the customer will notice an error within 10 days after installation but decide not to complain about it.⁴⁴

70. Conversely, not all trouble reports submitted within 10 days of installation would involve provisioning errors currently being captured on PM12. For example, if the customer lost dial tone or experienced static on the line, that might not be the result of a provisioning error. Given these obvious deficiencies in its reasoning, SWBT's proposal to eliminate its obligation to report data on mechanized provisioning accuracy may simply be an attempt to conceal its poor performance.⁴⁵

71. **Wholesale Billing Timeliness.** In March, SWBT's ability to provide wholesale bills on a timely basis dramatically declined. For February, SWBT reported that it returned 100 percent of its bills on a timely basis – which the TPUC has defined as within 6 workdays from the billing date (PM 18). However, in March SWBT was able to issue *only 65.7 percent* of wholesale bills to CLECs on a timely basis. The March performance was even worse than SWBT's performance for November (76.4 percent) or December 1999 (76.3 percent).

72. SWBT's performance is further illustration of SWBT's failure to provide nondiscriminatory access to billing functions. As we have previously testified, this failure is not

⁴⁴ For example, a customer might find that it received a feature that it did not order, but decides that will take the feature anyway. Conversely, the customer might discover that it did not receive a feature that it ordered but decides, on further reflection, to do without that feature.

⁴⁵ After CLECs objected to its proposal to eliminate the performance measurement on mechanized provisioning accuracy, SWBT agreed to give further consideration to possible means of capturing other provisioning errors, including those errors not currently included in the performance measurement.

fully captured by SWBT's reported performance data. *See* Chambers/DeYoung Decl., ¶ 135.

Indeed, statements by SWBT during a conference call on performance measurements on May 12, 2000 revealed that the billing data reported by SWBT do not fully capture its performance in critically important areas.

73. For example, during the May 12 conference call AT&T asked SWBT why the AT&T-specific reports provided by SWBT contain no AT&T-specific data for Wholesale Billing Timeliness (PM18) or for Percent of Accurate and Complete Formatted Mechanized Bills (PM 15). SWBT replied that these performance measurements do not capture UNE wholesale billing, and thus would not include wholesale bills for AT&T's UNE-P orders. SWBT asserted that these measures refer only to bills transmitted via EDI – which currently encompasses only bills to resale providers -- whereas UNE-related wholesale billing is transmitted under Billed Data Tape (BDT).⁴⁶ In other words, these measurements are limited to wholesale bills for CLECs providing service through resale, and totally exclude CLECs providing service through UNEs and the UNE platform.

74. SWBT's comments during the May 12 conference call also made clear that the data reported by SWBT for Billing Completeness (PM 17) are worthless. SWBT's business rules define this measurement as the "Percent of service orders completed within the billing

⁴⁶ Although SWBT's business rules define PM 15 (Percent of Accurate and Complete Formatted Mechanized Bills) in terms of bills sent "via the mechanized EDI process," they include no such limitation for PM 18 (Wholesale Billing Timeliness). Texas Performance Measures, Business Rules, Version 1.6.

cycle that post in the CRIS or CABS billing systems prior to the customer's bill period." Texas Performance Measures, Business Rules, Version 1.6.

75. Because Billing Completeness is defined only in terms of posting of the completed service order "prior to the customer's bill period," AT&T has been concerned that this measurement would not include late or delayed posting, which creates the risks of continued (and incorrect) billing of the CLEC's customer by SWBT, and of double billing.⁴⁷ When AT&T raised its concern on May 12, however, SWBT replied that in providing data for this measurement, it is defining "the customer's bill period" as the *CLEC's* bill period – not, as AT&T had assumed, the *end user's* bill period. Thus, SWBT is not even reporting the percentage of orders completed within the billing cycle that post prior to the end-user's bill period. As a result of SWBT's interpretation, the data that it has reported for this measurement are of no value in determining whether there is a potential for double billing, since SWBT's cycle for billing CLECs bears no relation to the end-user's billing cycle.

76. The need for a reliable measurement of late or delayed posting is particularly necessary in view of SWBT's continued deficient performance in that area. An analysis of the raw data supporting SWBT's reported monthly performance for AT&T's 8db loop orders under performance measure 58 (missed installation dates for UNE orders), which we described in our previous declaration, showed that SWBT was woefully unable to post AT&T's completed orders (and, likely, the orders of all other CLECs) in a timely manner between December and

⁴⁷ See Chambers/DeYoung Supp. Decl., ¶ 118; Declaration of Sarah DeYoung, filed January 31, 2000, ¶ 186.

February. Chambers/DeYoung Supp. Decl., ¶ 119. In March, the posting delays continued to be substantial, as the following table demonstrates:

	<i>December</i>	<i>January</i>	<i>February</i>	<i>March</i>
Total Orders Posted	[XXX]	[XXX]	[XXX]	[XXX]
1 day delayed	94.3%	99.2%	100%	97.2%
5 day or more delayed	72.5%	72.4%	64.4%	41.3%
Longest delay	25 days	11 days	32 days	30 days
Average Posted Days	6.08	5.54	5.26	4.75

77. SWBT's March performance, although a modest improvement over that in February, is still worse in some respects than its August 1999 performance. *See* Chambers/DeYoung Supp. Decl., ¶ 120; DeYoung UNE-L Decl., ¶ 189 (in August 1999, 91% of AT&T's db loop orders were delayed at least 1 day in posting, 23% were delayed 5 days or more, and the longest posting delay for such orders was 17 days). Clearly, SWBT has not complied with its obligation to provide adequate, nondiscriminatory access to billing functions.

78. **Loss Notification Reports.** When an AT&T local customer leaves AT&T (that is, migrates from AT&T to another LEC), SWBT is required to provide AT&T with notification of that migration. Upon receiving such notification, AT&T discontinues its billing of the customer. Although the discontinuance of billing will not cause a customer to lose dial tone, the customer will lose any voice mail service that it had been provided.

79. Prompt notification of migrations is essential to ensure that AT&T bills customers accurately. Without notice that a customer has migrated to another LEC, AT&T will continue to bill the customer. As a result, the customer will be overbilled – and likely will blame the error on AT&T.

80. SWBT, however, is increasingly failing to provide AT&T with reports of migrations that have occurred. Since February, AT&T has failed to receive notices for nearly 200 customers that have left AT&T – and has thus overbilled those customers.

81. The number of instances where SWBT provided no loss notification report is summarized in the following table:

	Number of Customers For Which SWBT Sent No Loss Notifications
January	-- ⁴⁸
February	10
March	87
April	99

These statistics undoubtedly understate the magnitude of the problem, because AT&T learns of SWBT's failure to provide loss notification reports only when the customer calls AT&T and complains that it is still being billed (erroneously) by AT&T.

82. SWBT's increasingly deficient performance in the provision of loss notices is inconsistent with any reasonable notion of operational readiness. Moreover, SWBT's performance at current volume levels raises concerns about its future performance as CLECs expand their market entry and competition increases in the local exchange market – and customer “churn” increases to vastly higher levels. If SWBT's inability to provide loss notification reports continues to increase in a more competitive market, CLECs will overbill

⁴⁸ Data regarding the number of customers for which loss notifications were not sent in January are unavailable.

large numbers of customers, with the resulting customer dissatisfaction – making it all the more difficult for CLECs to compete.

83. Other Indications of Lack of Operational Readiness. In addition to the above-described deficient performance by SWBT, the jeopardy notices that SWBT provides to AT&T are a further indication of the lack of operational readiness of the OSS. A significant percentage of these notices contain jeopardy descriptions that do not appear valid under the circumstances or, even if valid, should have been detected by SWBT's systems before they issued a FOC. In April, for example, three jeopardy descriptions accounted for more than half of the 1,139 jeopardy notices that AT&T received for UNE-P orders: (1) "Field Visit Determined Address Invalid" (230 notices); (2) "NSP [Network Service Provider] Missed Appointment" (93 notices); and (3) "Verify Address or Provide Nearby Telephone Number" (276 notices). *See* Attachment 4 hereto.

84. It is highly questionable whether these problems actually occurred to such an extent. For example, the large number of jeopardy notices stating that the "Network Service Provider" (SWBT) missed an appointment raises serious questions as to (1) whether appointments were necessary at all (since many of AT&T's UNE-P orders are conversions) and (2) whether SWBT's staffing is sufficient. Furthermore, to the extent that the address on an order was inadequate, SWBT's systems should have detected them earlier in the process (particularly during LASR and MOG edits). Consequently, the issuance of large numbers of jeopardy notices with these descriptions appears to reflect serious deficiencies in SWBT's systems.

B. The Comments Raise Further Concerns Regarding the Capacity of SWBT's Systems To Meet Current and Forecasted CLEC Demand.

85. The comments submitted by MCI WorldCom cast further doubt on the capacity of SWBT's OSS to meet current and foreseeable demand. *See* Chambers/DeYoung Supp. Decl., ¶¶ 146-151. It appears that the combined volumes of orders that MCI WorldCom and AT&T *alone* will submit at full "ramp-up" may exceed the capacity of SWBT's systems.

86. In February, SWBT advised AT&T that any AT&T transmissions in excess of 500 orders per hour would be "held" at SWBT's end, to be processed at a rate of no more than 500 orders per hour. *See id.*, ¶ 146; Dalton/DeYoung Reply Decl., ¶¶ 52-61. In light of this policy, no weight can be placed on SWBT's claim that it is capable of processing more than 2000 orders per hour. *See* Dalton/DeYoung Reply Decl., ¶ 59 & n.92. This is particularly true in view of the continuing delay in SWBT's development, and Telcordia's validation, of the new metrics which Telcordia had recommended be added as a result of its concern over the high utilization rate for SWBT's MVS system. Moreover, despite its own finding that a single capacity test is insufficient to determine SWBT's ability to manage future capability issues, Telcordia has no plans to conduct additional capacity testing. Chambers/DeYoung Supp. Decl., ¶¶ 149-150.

87. In its recent comments, MCI WorldCom states that it expects to submit between 3,000 and 5000 orders per day in full-scale operations.⁴⁹ AT&T expects that its total order volumes (including all ordering activity) would be [XXXXXXXXXXXXXXXXXXXXXXX]

⁴⁹ *See* Comments of MCI WorldCom, Inc., on the Application By SBC For Authorization To Provide In-Region, InterLATA Services in Texas, filed April 26, 2000, at 3.

once AT&T makes full-scale market entry. The combined daily volumes of AT&T and MCI WorldCom would severely tax, if not exceed, SWBT's stated capacity – without even considering the significant additional order volumes that would be submitted by other CLECs.⁵⁰

88. Even leaving aside MCI's market entry plans, data in SWBT's reject trending reports for March 2000 raise serious questions about the capacity of its systems. According to the report, SWBT returned 362 error messages with error code MR0015 ("Requested Due Date Unavailable") on AT&T UNE-P orders in March. These messages represented 17.65 percent of the manual rejection notices returned on AT&T's electronically-submitted UNE-P orders.⁵¹ By contrast, SWBT reports that it returned only 27 error messages with this code to AT&T in January.⁵² This 13-fold increase, which would be alarming in any event, is particularly disturbing because the statistic includes service requests for which AT&T provided advance notice *beyond* that required in the applicable standard intervals. For example, the manual rejects returned with this code included "move" requests by AT&T for a local customer where AT&T

⁵⁰ Applying a similar methodology and making similar assumptions about peak usage and peak hour arrival rates as were described in Paragraph 60 of the Dalton/DeYoung Reply Declaration, AT&T estimates that with AT&T and MCI at full-scale operation daily volumes – even if all other CLEC volumes remain static at March 2000 levels – the hourly demands of SWBT's order processing capabilities would be more than [XXXX] as high as SWBT's current stated capacity.

⁵¹ See SBC CLEC Website, CLEC Specific Reject Reports, Mechanized Orders – Manual Rejects Report, March 2000.

⁵² These figures do not include error messages that are returned when the due date requested by the CLEC already has passed, when the due date is incorrect, or when the requested due date is less than the standard interval.

requested a due date at least one day later than the three-day standard installation interval.⁵³

AT&T has experienced similar problems with other UNE-P order types as well.⁵⁴

89. Moreover, instances where due dates on UNE-P orders are unavailable should be rare. SWBT's policy, which AT&T follows, is that UNE-P orders involving simple migrations will be processed the same day if they are submitted by 3:00 p.m. Also, most UNE-P conversions involve a purely electronic transaction not requiring a field visit. The fact that SWBT reports such a high incidence of unavailable due dates therefore suggests that (1) orders are being queued up in SWBT's systems for lengthy periods of time before they are actually processed; (2) ordering volumes have already reached or exceeded current OSS system capacity, thereby causing processing to be delayed; or (3) SWBT workforce limitations are delaying provisioning of "dispatch required" orders even at current, emerging volume levels. Under any of these scenarios, SWBT clearly lacks the ability to handle ordering volumes in the timely manner that parity of access requires.

VII. THE POST-REGULATORY MECHANISMS CITED BY THE TPUC ARE INSUFFICIENT TO ENSURE THAT SWBT COMPLIES WITH ITS OSS OBLIGATIONS.

90. Acknowledging that "SWBT's application is not perfect," the TPUC expresses its commitment "to providing a forum for CLECs to raise concerns about SWBT's

⁵³ In one specific example (PON00370702A01), AT&T sent a move order to SWBT on March 23 with a due date of March 27. The MROO15 reject notification was not received until March 28, a day after the due date.

⁵⁴ For example, AT&T submitted PON00510616A01 (a new order type) to SWBT on May 9, with a requested due date of May 15. A rejection notice with error code MR0015 was received on May 10.

actions or inactions even after Section 271 relief is granted.” TPUC Eval. at 3. Thus, the TPUC promises that it will continue to monitor SWBT/CLEC working groups such as the CLEC User Forum and the OSS Change Management Process. The TPUC also cites the informal process that it has established, and “that allows SWBT or CLECs to raise OSS implementation issues and have those issues resolved quickly.”⁵⁵

91. The availability of these post-Section 271 approval mechanisms, of course, has no bearing on whether SWBT is *currently* in compliance with its OSS obligations under Section 271. More importantly, although the TPUC is undoubtedly sincere in its intentions, none of the mechanisms that it cites are likely to prove effective in ensuring that SWBT complies with its obligations, or that noncompliance will be speedily corrected.

92. The TPUC’s promise to “monitor” the CLEC Users’ Forum (“CUF”) is of little benefit to CLECs, because the CUF is not regulated.⁵⁶ The CUF is a private group composed solely of SWBT and the CLECs. Moreover, although the guidelines of the CUF state that the CUF may consider OSS-related issues (including ordering and provisioning, maintenance and repair, and billing), resolution of issues in the CUF requires the approval of every participant, including SWBT. The CUF guidelines specifically state that “Resolution can only be reached if all those at the CLEC User Forum unanimously feel that the issue has been

⁵⁵ See TPUC Eval. at 3 & n.3 (citing *Informal Dispute Resolution for Issues Relating to Operations Support Systems*, TPUC Project No. 21000).

⁵⁶ The CLEC User Forum Guidelines specifically state that the CUF “is not intended to serve as a Regulatory Forum.” See SWBT Accessible Letter No. CLEC00-63, dated March 5, 2000, Att. 2, at 1 (Attachment 11 hereto).

properly addressed and the resolution will adequately fulfill the needs of the CLEC that has sponsored the issue.”⁵⁷ The guidelines specifically provide that if an impasse is reached with respect to a particular issue, and the reason for the impasse is a disagreement between SWBT and the CLECs, the CUF’s Steering Committee (to which any impasse may be escalated) “will facilitate the escalation of the impasse back to SWBT.”⁵⁸ If, upon such escalation, SWBT remains in disagreement with the CLECs, the CLECs have no further recourse within the CUF.

93. The history of the CUF to date has shown that resolution of problems in the CUF can take an inordinately long time to achieve. The CUF guidelines provide no timetables or deadlines for the resolution of problems. This omission, together with the need for unanimity, gives SWBT the ability to ignore or postpone issues indefinitely until it is willing to address their resolution. CLECs have, in fact, experienced delays in resolving critical and, in many instances, longstanding issues.

- End-user outages on conversions, for example, was a high-priority issue identified in TPUC Project Nos. 16251 and 21000 (as well as in the Change Management Process) long before the formation of the CUF, where the issue was included as an initial agenda item in December 1999. Yet SWBT has neither proposed, nor agreed to, a solution that would resolve the range of processing problems that have been associated with the multiple-order process flow.
- Another long-running issue left over from the Change Management Forum is the process and interval to obtain User Identification (Ids). That issue, like the end-user outages on conversions issue, was transferred to the CUF in December 1999. SWBT stated in the May 2000 meeting of the CUF that the

⁵⁷ See *id.*, Att. 2, at 4.

⁵⁸ *Id.*, Att. 2, at 4-5.

new process has been trialed, but will not be generally available to CLECs until July 2000.

- In addition, CLECs have not succeeded in efforts to achieve expedited treatment on operational issues of more recent vintage, including a still-unresolved issue raised with urgency by CLECs in April concerning the accuracy of loop qualification data.

94. The TPUC's reliance on the Change Management Process is also misplaced.

As previously stated, SWBT has consistently *failed* to comply with its obligations with the Change Management Process, even as it has sought approval of its Section 271 application before the TPUC and this Commission. *See* ¶¶ 46-49, *supra*; Dalton/DeYoung Initial Decl., ¶¶ 37-73; Chambers/DeYoung Decl., ¶¶ 11-31. The TPUC itself has not moved to enforce its July 1998 order requiring versioning, which SWBT now promises to implement on July 22.⁵⁹ Nor has the TPUC been responsive to the CLECs' complaints that SWBT has not acted expeditiously to move more of its back-end edits to its front-end systems.⁶⁰ Given the TPUC's

⁵⁹ Another functionality that SWBT had committed to introducing, in part, on July 22 was an improvement in the flow-through capability for supplemental orders. SWBT, however, recently announced that the first phase of its introduction of increased flow-through capability for these orders has now been delayed from July 22 to the September 2000 EDI release, thus delaying the earliest date by which the first major category of supplemental order activity can be spared the risks inherent in manual handling. Today, only those "supps" submitted to correct errors detected and returned to the CLEC before SWBT has generated an internal service order have flow-through capability (and are thus "MOG-eligible"). Other supplemental orders, including resubmissions in response to manual reject notices or to request a change in due date, cause the LSR to fall out to manual handling. *See* Dalton/DeYoung Initial Decl. ¶¶ 144-149.

⁶⁰ *See* Chambers/DeYoung Supp. Decl., ¶ 106 & Att. 14. Following an April 19, 2000 SWBT filing made in TPUC Project Nos. 16251, 20400 and 22165 addressing topics including delayed return of error notifications, AT&T filed a response that reiterated its concerns about the slow pace of SWBT's movement toward fully-mechanized edit capability. The TPUC has not acted on AT&T's filing, which included a specific request that the TPUC impose an implementation schedule requiring SWBT to meet definite deadlines for introducing additional electronic edit

(Continued . . .)

recommendation that SWBT's application be approved notwithstanding SWBT's poor performance, there is little reason to believe that the TPUC's monitoring of the CMP will make SWBT any more compliant with the CMP in the future.

95. The "informal processes" that the TPUC established in its Project No. 21000 also are unlikely to ensure SWBT's compliance with its OSS obligations. As SWBT has acknowledged, the informal process was established to handle complaints by individual CLECs regarding issues unique to that CLEC.⁶¹ OSS issues, however, normally have industrywide implications, or affect numerous CLECs. The "informal process" is not a suitable mechanism for handling problems of such scope, since the only parties in a complaint proceeding are the CLEC bringing the complaint and SWBT.⁶²

96. The limited value of the informal process is reflected by the fact that only two CLECs – AT&T and Birch Telecom – have used it since it was established during the fall of 1999. AT&T filed a report in TPUC Project No. 16251 (the primary Section 271 docket) regarding some of the most significant deficiencies in SWBT's OSS (such as service outages, SWBT's practice of issuing three service orders for each UNE-P conversion order, and order

(Continued . . .)

capabilities. This proposal for regulatory oversight of a schedule that would require SWBT to move edits from SORD forward into LASR was first made by AT&T in July 1998. *Id.*, Att. 14 at 1.

⁶¹ See Attachment 12, Transcript of hearing in TPUC Project No. 16251, November 2, 1999, at 263 ("The way that forum is set up[,] we [SWBT] work with an individual customer on those issues").

⁶² CLECs have expressed such concerns in TPUC proceedings. See *id.* at 266-268 (statements by ICG and Sage Telecom).

rejections). The TPUC then transferred the filing to Project No. 21000. After two meetings and hearings, AT&T and SWBT had achieved limited progress in resolving the issues. At that point, however, other CLECs raised concerns that the issues in AT&T's complaint might have industrywide implications, and should therefore be addressed in the CLEC User Forum. As a result, the outstanding operational issues in AT&T's complaint were moved to the CUF – where they remain unresolved.

97. Birch also filed a complaint under the informal process in June 1999. However, to the best of AT&T's knowledge, Birch's complaint has never been resolved. In fact, last November Birch complained of the lack of progress on the complaint: "The timelines continue to just move very, very slowly, and we need resolution of the issues."⁶³

98. In fact, even orders from the TPUC that SWBT provide parity of access have sometimes proven ineffective. SWBT, for example, still has not implemented "versioning," even though the TPUC issued an order in July 1998 requiring it to do so. *See Dalton/DeYoung Initial Decl.*, ¶ 41. SWBT has similarly failed to comply with the TPUC's mandate requiring it to provide CLECs with parity of access to its line information database ("LIDB"). After concluding that SWBT was not providing parity of access to the LIDB, the TPUC ordered SWBT to implement a two-phase process to improve LIDB access. The first phase of that process, which SWBT was required to complete by mid-January 2000, required SWBT to implement functionality for UNE-P orders that will enable it to populate the LIDB database

⁶³ *Id.* at 264-265 (statement of Rick Tidwell, Birch Telecom).

based on information provided by the CLEC through the initial LSR. Dalton/DeYoung Initial Decl., ¶ 194.

99. SWBT, however, has failed to comply with the requirements of the TPUC. For example, in the specifications that it promulgated for “Phase I” of the two-phase process, SWBT requires that CLECs choosing to have the LIDB record transferred to it “as is” must send a form *by fax* to change the record status indicator from “transitional” to “stable.”⁶⁴ This requirement is a clear disregard of the TPUC’s requirement of parity – demonstrating that, even when the TPUC orders SWBT to comply with parity requirements, it cannot be assumed that SWBT will do so.⁶⁵ In fact, MCI WorldCom recently submitted evidence that LIDB processes

⁶⁴ See SWBT Accessible Letter No. CLEC99-176, dated December 30, 1999, Att. 5 at 48. “Transfer as is” is an option that allows a CLEC to convert an LIDB record to its ownership with no changes in the end-user data. A “transitional record” identifies accounts that have changed service providers using the “transfer as is” option. Such a record requires a CLEC to confirm that it accepts and supports all of the data transferred to its ownership. If the transitional record remains transitional, SWBT will delete the account from its database “as having been abandoned.” *Id.*, Att. 5, at 48.

⁶⁵ Phase I implementation suffers from further deficiencies, including the inability of CLECs to update the LIDB record, and to leave the existing LIDB record intact while communicating limited, specific changes, through an LSR process. The latter problem – where SWBT deletes the entire contents of the LIDB record in the event that the CLEC requests any modification – raises particular concerns. SWBT rebuilds the record through a combination of defined LSR field inputs and default values, some of which cannot be overridden and may be inconsistent with the customer’s preferences. Thus, although the TPUC may have communicated the expectation that SWBT would develop a process for LIDB creation and updating that is at parity with SWBT’s retail operations, clearly that standard is not being met.

are woefully inadequate even after SWBT's purported implementation of Phase I pursuant to the TPUC's order.⁶⁶

⁶⁶ See McMillon/Sivori/Lichtenberg Decl., ¶¶ 62-76. *See also* Dalton/DeYoung Initial Decl., ¶¶ 192-197 (showing that neither SWBT's current LIDB procedures, nor the Phase I/Phase II work required by the TPUC, satisfy parity requirements). MCI complains, for example, about the failure of the process to produce accurate updates to PIC data in LIDB records. McMillon/Sivori/Lichtenberg Decl., ¶¶ 66-71. SWBT specifically addressed the importance of accurate LIDB PIC data in its Accessible Letter setting forth the requirements for its LIDB release. Specifically, in a question-and-answer attachment to the Accessible Letter, SWBT addressed the question of whether it was necessary for a CLEC to update LIDB records should the PIC be changed on one of its accounts. SWBT answered that it "expected that the CLEC will update the PIC," and emphasized that "[t]he accuracy of the PIC has potential financial impact on the Interexchange Carrier providing the service." SWBT Accessible Letter CLEC SS99-176, dated December 30, 1999, Att. 5, at 49.

CONCLUSION

100. The TPUC's favorable assessment of SWBT's application cannot change the fact that SWBT is not providing nondiscriminatory access to its OSS. The TPUC has essentially relied on the assertions and promises of SWBT, while disregarding the evidence presented by AT&T and other CLECs demonstrating that parity of access simply does not exist.⁶⁷ As long as SWBT's OSS continue to suffer from such deficiencies as high rejection rates, high rates of manual rejects, the inability of CLECs to integrate pre-ordering and ordering functions, and unacceptable rates of provisioning errors, SWBT is not providing CLECs with the same access to its OSS as that enjoyed by its retail operations.

⁶⁷ See Comments of ALTS and the CLEC Coalition, at 1-2 & Koch/Smith Joint Aff., ¶¶ 11-12; Comments of Competitive Telecommunications Association, at 2-3; Comments of MCI WorldCom at 3-33 & McMillon/Sivori/Lichtenberg Supp. Decl.; Comments of Rhythms Netconnections Inc. at 15-17; Comments of Sprint at 38-45; Comments of Telecommunications Resellers Association at 1, 8, 12-17; Comments of Z-Tel Communications, Inc., at 2-4.

FCC DOCKET CC NO. 00-65

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May 17, 2000

Sam O. May

FCC DOCKET CC NO. 00-65

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May __, 2000


